

REQUEST FOR COUNCIL ACTION

SUBJECT: Ordinance amending City Code Title 8, Chapter 3 Article C, Section 5, "Form of Financial Assurance".


SUMMARY: Consider approving an ordinance amending City Code Title 8, Chapter 3 Article C, Section 5 related to Letters of Credit.

FISCAL:
IMPACT: None


STAFF RECOMMENDATION:
Staff recommends that City Council approve an Ordinance amending City Code Title 8, Chapter 3 Article C, Section 5, "Form of Financial Assurance".

MOTION RECOMMENDED:
I move to approve Ordinance 14-26 amending City Code Title 8, Chapter 3 Article C, Section 5, "Form of Financial Assurance".


Prepared by:


Darien Alcorn
Deputy City Attorney

Reviewed by:


for Wendell Rigby P.E.
Public Works Director

Recommended by:


Richard L. Davis
City Manager

BACKGROUND DISCUSSION:

Developers are required by the City Code to provide financial assurance for completion of improvements that are required as a condition of development approval. Currently, financial assurance may be in the form of cash, an escrow account or a letter of credit. If the developer opts to present a letter of credit, the City Code requires that the issuing bank accept at an office located within 50 miles of the City.

One advantage to this is that the bank will typically require the original letter of credit. Hand delivery can be accomplished within 50 miles, so the City does not need to rely on a mailing service. If hand delivery is used, the City can retain control of the original and be its own witness as to the time of presentation if the letter of credit's expiration date becomes an issue. Demand is sometimes made because the letter of credit is about to expire, so it is good to have a closer office location for fast hand delivery. However, it may be noted that the City has had sufficient time to use a service such as Federal Express in the past rather than the hand delivery option.

One disadvantage of the 50-mile requirement is that the banks typically have their letter of credit departments, and expertise, in a single national location or limited number of locations. These tend to be out of state, so it can be difficult to arrange for delivery at a location within 50 miles of West Jordan. Other disadvantages are that the bank staff who would receive the delivery at the closer location will likely not be trained in letters of credit, and the funds for payment may not be immediately available. Also, the staff member who receives the delivery will rely on some other form of mail service to send the letter of credit to the correct location, a step that the City is trying to avoid with its current code.

It has been suggested by a few banks that the City accept letters of credit that authorize demand to be made through electronic methods such as facsimile or email. This would address one of the City's concerns by allowing the City to retain control of the original letter of credit. Although it would not really change the risk of relying on an uncontrolled delivery service, the receipt of delivery could probably be confirmed more quickly. City staff could probably make multiple attempts at emails, faxes and telephone calls in the amount of time it would take to attempt one hard mail or hand delivery. Another advantage would be that the City would know that the person receiving the delivery is trained in letters of credit, and delivery would be directly to the bank location that would issue payment.

The proposed text amendment is presented as a possible alternative to accommodate developers and banks with what staff believes is little risk to the City. City staff is recommending the text amendment because it seems that electronic delivery could be a faster and less concerning method, because the City can retain the original letter of credit, make multiple attempts at delivery over a short period of time, and confirmation may be available more quickly. If pressed for time, a hand delivery option is good, but historically there has been sufficient time to use a hard mail delivery service. Thus, it seems that there should be sufficient time to make demand electronically.

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

ORDINANCE NO. 14- 26 [LETTERS OF CREDIT]

AN ORDINANCE AMENDING TITLE 8, "PUBLIC WORKS, PUBLIC WAYS AND PROPERTY."

WHEREAS, the City of West Jordan adopted a City Code in 2009, for the purpose of carrying into effect and discharging all powers and duties conferred by law upon the city and its officers, employees and inhabitants, and to provide for the safety, preserve the health, promote the prosperity, improve the morals, peace, good order, comfort and convenience of the city and its inhabitants, and to protect property in the city; and

WHEREAS, the West Jordan City Council finds and determines that the purpose of the 2009 City Code, and the public health and welfare, will best be reached by the adoption of the following amendments to Title 8, Chapter 3 of the 2009 City Code.

NOW THEREFORE, IT IS ORDAINED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH:

Section 1. Title 8, Chapter 3, Article C, Section 5 of the 2009 City Code shall hereafter read as follows:

8-3C-5: FORM OF FINANCIAL ASSURANCE:

The city shall accept the following forms of financial assurance:

- A. An escrow account held by a federally insured bank, savings and loan, or credit union, authorized to do business in the state, in a form approved by the city attorney. The city shall have immediate access to the proceeds, which shall be available to the city by presenting a site draft at an office located within fifty (50) miles of the city.
- B. An irrevocable standby letter of credit issued by a federally insured bank, savings and loan, or credit union, authorized to do business in the state, in a form approved by the city attorney. The city shall have immediate access to the proceeds, which shall be available to the city either by: (1) presenting a site draft at an office located within fifty (50) miles of the city; or (2) presenting an electronic copy of the site draft by email or facsimile.
- C. Cash or a cashier's check, for deposit with the city in its accounts. Interest, if any, earned by the city on the deposited sum shall be retained by the city as reimbursement and an offset for the cost of administering the improvement construction and assurance agreement and financial assurance. (2001 Code § 89-6-1205; amd. Ord. 13-03, 2-13-2013; Ord. 14-07, 03-12-2014; Ord. 14-__, 07-30-2014)

Section 3. This Ordinance shall become immediately effective.

CITY OF WEST JORDAN

[illegible]

CITY CLERK/RECORDER'S CERTIFICATE OF PUBLICATION

I, Melanie S. Briggs, certify that I am the City Clerk/Recorder of the City of West Jordan, Utah, and that the foregoing ordinance was published in the Legal Section, of the Salt Lake Tribune, on the _____ day of _____, 2014, pursuant to Utah Code Annotated, 10-3-711.

MELANIE S. BRIGGS, MMC
City Clerk/Recorder

[SEAL]

Legislative

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